

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,018

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Appeal of)

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INTRODUCTION

The petitioner appeals a proposed revocation of her residential care home license by the Department of Aging and Disabilities for alleged violations of regulations involving building and fire codes.

FINDINGS OF FACT

1. The petitioner runs a residential care home for which she has been licensed by DAD since 1974. She is licensed for twenty-two residents and currently houses seventeen, most of whom are mentally disabled. Her facility is in an older two story wooden residence which has been converted for that purpose.
2. In November of 1993, the petitioner was visited by an assistant state fire marshall who inspected her residential care home in order to make recommendations on continued licensing to the Department of Aging and Disabilities. After that visit, the petitioner was notified, in writing, that there was no adequate ramp to the outside sidewalk, that several outlets in her kitchen did not have ground fault insulators, that her kitchen stove was not properly ventilated, that her kitchen hood was not protected with an extinguishing system, that her fire alarm system needed testing and updating, and that the open stair between the first and second floor had to be closed off to prevent the rapid spread of fire.
3. On December 2, 1993, DAD notified the petitioner that it had received a deficiency report on the facility from the fire marshall and sent her a copy. She was asked to return a plan of correction by December 16, 1993, which she did. She was also told that she could disagree with the deficiencies and that failure to correct the deficiencies could result in several penalties, including administrative penalties or revocation of her license.
4. On July 8, 1994, the assistant state fire marshall reinspected the premises. On July 11, 1994, the petitioner was notified in writing by him that several items had not been completed including the hood extinguishing system and the lack of a door at the top of the stairs. She was also informed that the ramp was not completed in a way that would give the residents access to a sidewalk. The petitioner was also

notified of newly discovered violations including lack of automatic closers on the bedroom doors (or the installation of sprinklers) and continuing problems with the fire alarm system including the lack of a first floor pull station, lack of second floor smoke detectors, lack of an off the premises transmission unit for the fire alarm, lack of horn or bell/strobe light units to meet ADA requirements and heat detection coverage in the basement. The petitioner was ordered to remedy the deficiencies by August 30, 1994, and was advised that the lack of these items posed critical fire safety problems for the residents. The petitioner was asked to provide information by July 15, 1994, as to how she would correct the problems.

5. The petitioner responded by requesting a variance on the required items which request was considered by the variance review panel of the Department of Labor and Industry on October 24, 1994. In a detailed letter, the Board denied the request and explained the necessity of each required item and the reason that alternatives would not work. The petitioner was advised that she needed to correct the violations within 60 days or request Reconsideration or appeal to the Superior Court. She took neither of these latter actions.

6. On February 8, 1995, the assistant state fire marshall reinspected the petitioner's facility and noted that all previous violations still existed without progress or change. On that same day, the petitioner's facility was visited by a nurse surveyor who works for DAD to determine whether any other problems existed at the home. After the visit, she discussed several problems with the petitioner including the most immediate problems--the rotten bathroom floor and the need to practice fire drills. She also sent a written statement to the petitioner indicating that she failed to meet certain paperwork requirements. A copy of that document is attached hereto as Exhibit No. One and incorporated by reference.

7. The petitioner returned the report with a plan of correction for the items noted, including a management plan which was to be reviewed by DAD but apparently never was returned to her. The petitioner complained that she could not do assessments on patients for over a year because she did not have the proper forms and blamed DAD for not helping her with her paperwork. The DAD investigator was unaware of the lack of forms but pointed out that the petitioner's facility is less than two miles from the surveyor's office and that she could have stopped by for forms at any time.

8. On February 22, 1995, three administrative citations were issued to the petitioner by the state fire marshall for failure to correct three serious fire violations--the ground fault receptacles in the kitchen, the extinguishing system for the hood and the kitchen stove exhaust hood. The fines levied totaled \$1150 and were payable by March 14, 1995.

9. On March 6, 1995, the petitioner wrote asking for an extension of time to complete the work citing various financial complications and explaining that she had not wanted to invest the money involved because she had expected to have the property sold by March of 1995, a deal which fell through. She stated that she felt the residents were in no more danger at that time than they had been for the past 18 years.

10. On May 11, 1995, the Department of Labor and Industry held an informal meeting to attempt to resolve the correction of the fire safety problems. The citation was held in abeyance pending the petitioner's submission of a compliance schedule. In that schedule the petitioner agreed to make repairs as set forth in the attached Exhibit No. Two which is incorporated herein by reference. If she met with the schedule, the fine would be dropped or reduced. If she failed to meet the schedule, the fine would be immediately imposed. The schedule called for the correction of problems in three stages with June 15, July 15 and August 15 deadlines.

11. On June 19, 1995, the assistant fire marshall and yet another DAD surveyor went to the petitioner's facility to see what had been accomplished. They found that only the ground fault protection in the kitchen had been repaired. There was still no emergency light system, no periodic fire drills being conducted, and no updated fire alarm system which was to have been accomplished by that date. The petitioner was advised that she had not met the schedule and that the fines were now due and payable. However, the petitioner did not pay.

12. On July 28, the same two persons went to the facility to inspect the second phase work. They found that the violations due to be corrected by June 15 were still not accomplished and that nothing had been done per the July 15 deadline by which time the petitioner was to have installed a stove hood which suppressed fires and the build-up of grease, put automatic closers on the doors and placed a door at the top of the second floor.

13. On August 24, 1995, the Director of the Fire Prevention program at the Department of Labor and Industry notified DAD that he could no longer recommend licensure of the petitioner's residential care home based on continued uncorrected fire safety violations. He stated that administrative citations and penalties and extensions of abatement times had failed to result in compliance, although such compliance would still be pursued. The fire marshall stated that there are many other fire safety problems in the facility that they had not officially cited in order to give the petitioner the chance to focus on the most serious ones first. Given the past history, there were serious doubts that the petitioner could or would cooperate with these repairs in the future.

14. That same day, August 24, 1995, DAD sent the petitioner a new survey statement with findings on the continued deficiencies noted in the February 8, 1995 survey. A copy of that report is attached as Exhibit No. Three and is incorporated herein by reference. The petitioner was asked to file an immediate plan of correction but she did not reply until almost ten weeks later, on November 11, 1995.

15. On September 25, 1995, DAD notified the petitioner that it intended to revoke her residential care home license effective November 15, 1995, for failure to correct the continued fire safety violations found in the surveys conducted over the last several years. Her failure to comply with Exhibit Two was cited specifically as the reason therefore.

16. At the petitioner's request, a review hearing was held on the proposed revocation on October 11, 1995, by the Commissioner of the Department of Aging and Disabilities. Following the hearing, he asked the nurse surveyor and assistant state fire marshall to reinspect the premises, which they did on October 12, 1995. They reported there had been some progress on the alarm system but that nothing was completed. The door closers were not in, the door on the second floor was in but not operable (it wouldn't stay closed), there was no contract for a fire suppressor for the kitchen hood and only one fire drill had been held since the violation was cited. The fire marshall took pictures of the porch that day which show that the roof was bowing and separating from the main house. He asked the petitioner to have the porch inspected by an engineer. The pictures also show that the stove is vented out beneath the roof of the porch instead of into the open air, a serious fire hazard. Because there continued to be serious deficiencies, the fire marshall would not recommend approval to the Commissioner, who then determined to uphold the decision to revoke. A copy of that decision is attached hereto as Exhibit No. Four and incorporated herein by reference.

17. DAD is particularly concerned about the lack of fire drills because such drills teach the staff which residents do not hear the alarms or cannot move when they go off. The need to leave the building and

methods for doing so must be reinforced in the residents, especially because of their mental disabilities. The few drills which were accomplished by the petitioner took five minutes, an unacceptable time because a building fills with smoke in from two to three minutes. The petitioner does not disagree that she failed to perform fire drills but states she has been reluctant to do so because it upsets the residents. She added that they know the fire drills are not real and that they tend to ignore them.

18. Subsequent to the decision to revoke, the petitioner obtained a letter dated November 7, 1995, from a fire alarm company indicating that the petitioner had signed a contract for repairs on June 20, 1995, had made a down payment on July 13. Thereafter, state permits were obtained and the basic fire alarm system requirements were completed on September 15, 1995. Magnetic door holders were also provided by that date. A digital off site monitor was also installed on September 18, 1995. The petitioner had never showed the original contracts to DAD or the fire marshall. She also provided a letter which indicated that a kitchen hood replacement firm had visited her facility on November 21, 1995, and that plans for the hood were being prepared for state approval and job acceptance by the petitioner which could be accomplished within 3 to 4 weeks of a signed order. The petitioner has not gone ahead with the hood because she does not feel the expense (over \$4,000) was justified given the fact that a revocation of her license was pending.

The petitioner feels that these letters showed that she had been making progress towards improving the physical plant and that she does take the fire safety of the residents seriously. She added that she had torn down part of the decaying porch subsequent to the October, 1995, site visit. She blames her tardiness in making repairs on short time frames for compliance and her lack of control over contractors.

19. The petitioner argues as well that her facility should not be closed down because the residents will have to relocate to less desirable places. DAD states that the local mental health agencies are aware that the facility may be closed soon and are making arrangements for alternative housing for the residents.

20. From the above evidence it must be concluded that the petitioner has, since at least 1993, received written notice of serious fire safety deficiencies in her facility requesting that she make corrections according to certain schedules and that she has failed to make such corrections on schedule over a more than two year period and, in fact, has often failed to recognize the need for such corrections. Both the assistant state fire marshall and the DAD surveyor have given the petitioner ample instructions and time frames, including generous extensions with regard to the corrections but despite citations and warnings of revocation, the corrections were not made in a timely manner and for the most part those that were made did not occur until after the petitioner received the proposal to revoke her license. The petitioner has made some of the corrections subsequent to the revocation letter but several serious fire safety problems continue to exist on the premises.

ORDER

The decision of the Department to revoke the petitioner's license is affirmed.

REASONS

The Department of Aging and Disabilities is authorized by 33 V.S.A., Chapter 71 to adopt regulations for the licensing of residential care homes and to take action to revoke licenses where good cause exists.

The regulations adopted by the Department provide, among other things, that:

8.9 Life Safety/Building Construction

All homes shall meet all of the applicable fire and safety and building requirements of the department of Labor and Industry, Division of Fire Prevention.

Residential Care Home Licensing Regulations Adopted October 17, 1993

The regulations also require notice to the licensee of any violations, a date for a plan of correction to be returned and a date for correction of violations as well as a notice of the possible sanctions for failure to do so. Regulation 4.14a, Id. Failure to comply with the notice results in a right to seek an informal hearing and to appeal to the discretion of the Commissioner. Regulation 4.14b. The Commissioner is authorized to take a number of actions for failure to comply including the following:

4.15.b Suspension, revocation, modification or refusal to renew a license upon any of the following grounds:

(1) violation by the licensee of any of the provisions of the law or regulations;

...

(5) failure to comply with a final decision or action of the licensing agency.

Id.

The evidence is abundant that the petitioner's facility has seriously violated fire safety requirements of the Department of Labor and Industry for at least two years. The petitioner herself admits as much. The petitioner has had all the notices, extensions and opportunities to which she is entitled by regulation (and then some) to try to come into compliance with these regulations. Even as of the date of the hearing, there were still serious problems which had not been corrected.

Given the continued and serious nature of the violations, the Commissioner was within his discretion to make the decision to revoke the petitioner's license. For him, this situation was obviously a case of too little too late. The unsafe conditions which exist in the facility and the petitioner's repeated reluctance to take remedial steps, provide ample reason for the Commissioner to make the decision that he did. Since the violations have been shown to exist and the Commissioner's decision to revoke a reasonable one, the Board is compelled to uphold his judgment. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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